

E.6  
2/5/97U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

F A X

PLEASE DELIVER THE FOLLOWING MATERIAL AS SOON AS POSSIBLE

DATE: February 5, 1997

## FAX TO:

Name: P.C. Lall  
Fax: (313) 692-7677  
Phone: (313) 692-7685

US EPA RECORDS CENTER REGION 5



546549

## FROM:

Name: Peter Felitti  
Fax: (312/FTS) 886-7160  
Phone: (312/FTS) 886-5114  
Address: U.S. Environmental Protection Agency, Region 5  
Office of Regional Counsel  
77 West Jackson Boulevard, C-29A  
Chicago, IL 60604Total number of pages transmitted including this page: 9  
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Attached is the document I spoke of.

Gene Schaffner

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT

IN THE MATTER OF:

AFL INC.,

Debtor.

Bankruptcy No. 96-48128-SWR  
HONORABLE STEVEN W. RHODES  
Chapter 7

**STIPULATED ORDER RESOLVING TRUSTEE'S MOTION  
TO ABANDON REAL AND PERSONAL PROPERTY  
LOCATED AT 1400 AND 1411 WYOMING, DEARBORN, MICHIGAN**

Now comes the Trustee (hereafter Trustee) of Debtor, the Donald J. Klacking Trust (hereafter Klacking), the Michigan Department of Environmental Quality (hereafter DEQ), and the Wayne County Treasurer, by their respective counsels and stipulate as follows:

1. On June 18, 1996, Debtor filed a Voluntary Petition under chapter 7.
2. Among the assets of Debtor is a parcel of real estate on Wyoming Street in the City of Dearborn, Michigan. The parcel is identified as Parcel 1 on Exhibit A attached hereto. Klacking owns Parcel 2 and had leased Parcel 2 to the Debtor for a term of five years terminating November 1, 1998.
3. Debtor utilized both parcels in its operations as a paint manufacturer. Parcel 1 was the manufacturing facility. Parcel 2 was the general office and warehouse. The two parcels will at times hereafter be collectively referred to as the "Site."

4. A substantial amount of unsold inventory and materials owned by the Debtor, including barrels of paints and solvents, was found at the Site. A goodly portion of the inventory and materials is "hazardous" and Debtor may well have been in violation of federal and state laws and regulations pertaining to storage of contaminants.

5. At the time of filing of the Petition, Debtor was in the process of remediating a portion of the land on Parcel 1 due to a prior release which occurred during the removal of one or more underground storage tanks. The remediation was relatively complete but ceased when the contractor performing the remediation, Growth Environmental Services, filed a Chapter 11 proceeding. The Chapter 11 has now become a liquidation proceeding.

6. On September 6, 1996, the Trustee herein filed a Motion for Authority to Abandon Real and Personal Property. Located at 6450 Wyoming and 6430 Wyoming, Dearborn, Michigan (the Site).

7. Subsequent to the filing of the Motion, the DEQ, Klacking, and the Wayne County Treasurer each objected to the Trustee's motion. All three objected on the basis of the doctrine set forth in Midlantic National Bank v New Jersey Dept of Environmental Protection, 474 U.S. 494; 106 S.Ct.758 (1986).

8. Debtor has more than sufficient assets to contribute to the cost of the remediation of the Site per the proposals #817-97 and 835-97 of RMF Global, Inc., attached hereto as Exhibit B and made a part hereof. Klacking will also contribute to the cost of the remediation. When the remediation of the Site is accomplished, the DEQ will issue its certificate of closure/completion and shall waive any penalties and fines which

might have been asserted against the Trustee, Klacking and officers and directors of the Debtor pursuant to Parts 201 and 213 of NREPA for releases and threats of release of hazardous substances occurring prior to the effective date of this Order. The remediation of any new release of hazardous substances occurring during the remediation of the Site shall be the sole responsibility and liability of RMF Global, Inc., and not of the Trustee, Klacking and/or officers and directors of Debtor.

9. In an effort to resolve this matter without substantial expense of litigation, and being cognizant of the duties and obligations of the Trustee, Klacking and the DEQ, the parties hereto agree to the entry of this Order.

**NOW THEREFORE;**

**IT IS ORDERED** as follows:

1. The Trustee, on behalf of the Debtor, shall contribute \$140,000.00 and Klacking shall contribute \$25,000.00 to a fund to be utilized for the payment of services performed pursuant to Exhibit B for the remediation of the Site.
2. The contribution by the Debtor shall be capped at \$140,000.00 and Klacking at \$25,000.00. No further liabilities shall be placed upon the Trustee or Debtor or Klacking with respect to the remediation of the Site.
3. The fund shall be held by the Trustee in a separate interest bearing account. The Trustee is hereby authorized to enter into the contract with RMF Global, Inc., per proposals #817-97 and 835-97 at a "not to exceed" cost of \$164,220.00. The fund shall be used exclusively to pay the costs of remediation and cleanup of the Site per the aforesaid contract.. No payment shall be made to any person or entity other than RMF

Global, Inc., unless agreed to in writing by the Trustee and Klacking. In the event the costs of clean-up are less than the contract price, the remaining monies shall be returned to the Debtor and Klacking in proportion to their original contributions to the fund.

4. The DEQ shall issue a written statement as to the specific requirements the contractor must accomplish in fully remediating this Site by reason of the release from the underground storage tank(s), including Exhibit B and the specific remediation activities to be performed by the contractor in advance of initiating any further remediation at the Site, including characterization and lawful disposal of all containerized liquid hazardous substances located currently at the Site.

5. The DEQ shall, upon completion of all the specific activities outlined the contractor's proposal, provide the Trustee and Klacking with a closure letter and acknowledgment that the property is fully remediated, and waive any penalties and fines which could have been assessed against the Trustee, the Debtor and/or its officers and directors or Klacking pursuant to Parts 201 and 213 of NREPA for releases or threats of release of hazardous substances occurring prior to the effective date of this Order. The remediation of any new release of hazardous substance occurring during the remediation of the Site shall be the sole responsibility and liability of RMF Global Inc., and not of the Trustee or the Debtor its officers and directors or Klacking.

6. Debtor and Klacking shall cooperate with respect to setting a floor price for the sale or rental of the Site and in selecting a real estate broker to assist them in obtaining a purchaser or lessee.

*Any value unpaid  
remain a lien on the property until paid in  
full.*

7. If sold, all current unpaid real property taxes shall be paid at the time of closing of sale. Brokerage commission and other regular expenses which are the obligation of a seller of realty shall be paid from the the proceeds of the sale of the Site. After payment of such expenses, the Debtor shall receive 30 % of the net sales price and Klacking shall receive the remainder of the net sales price. If leased, Debtor shall receive 30% of net rentals until it has been paid \$100,000.00; Klacking shall receive the remainder of the net rental. Upon execution of a lease, all current real estate taxes shall be paid. Debtor shall bear the cost of maintaining Parcel 1 until the Site is sold or rented; Klacking shall bear the cost of maintaining Parcel 2.

8. The Debtor and Klacking shall retain their respective rights against each other and against the other parties to this stipulated Order with respect to all matters not specifically covered herein.

9. This Court shall retain jurisdiction with respect to interpretation, enforcement or modification of this Order

10. The Debtor shall, within 10 days from the entry of this Order, apply for authority to enter into this agreement under Bankruptcy Rule 9019.

**HONORABLE STEVEN W. RHODES**  
**UNITED STATES BANKRUPTCY JUDGE**

**STIPULATION FOR ENTRY OF ORDER**

It is Stipulated on this \_\_\_\_\_ day of December, 1996 that the foregoing Order be entered by this Court.

By: Robert Karbel  
Robert Karbel (P15711)

By: \_\_\_\_\_  
Samuel D. Sweet (P48668)

3000 Town Center, Ste. 2150  
Southfield, MI 48075  
(810) 353-0150

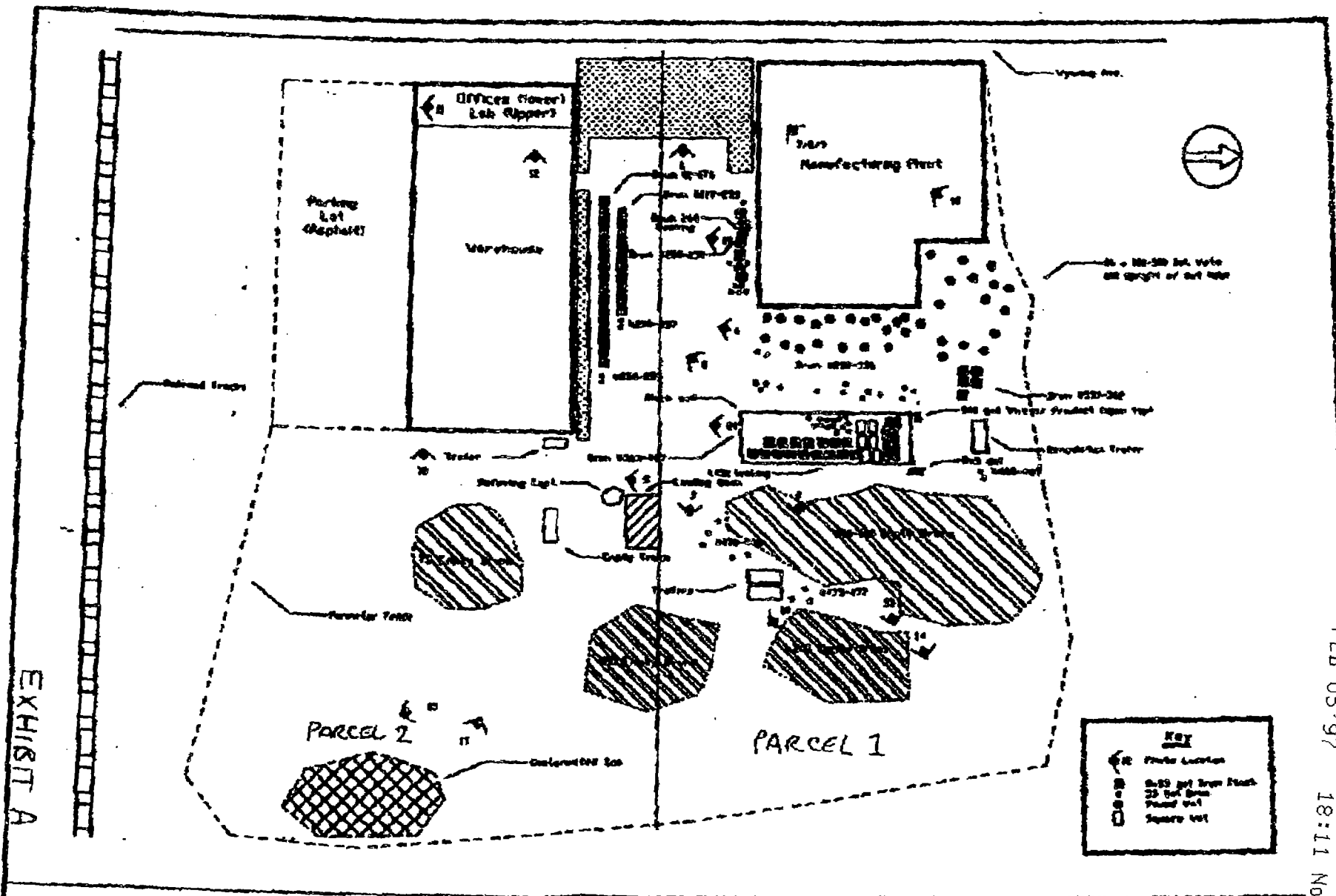
By: \_\_\_\_\_  
Gary Finkbeiner (P25363)  
Asst. Attorney General  
Natural Resources Division  
P.O. Box 300028  
Lansing, MI 48909  
(517) 373-7540

60KTM

1607 E. Big Beaver Rd., Ste. 205  
Troy, MI 48063  
(810) 528-6500

By: \_\_\_\_\_  
Karen Evangelista (P36144)  
Shermeta, Chumko & Kilpatrick, PC  
Attorney for Wayne County Treasurer  
445 S. Livernois #221  
Rochester Hills, MI 48307  
(810) 652-8200

EXHIBIT A



Automotive Finishes, Inc.  
2000 Viking Ave.

R.M.F. Global, Inc.  
Site Inspection / Drum Inventory  
Fig. 1 - Site Map (6-28-96)

Drawn By  
Drew

ID:312-353-8937

FEB 05 '97 18:11 No. 016 P. 08

3000 Town Center, Ste. 2190  
Southfield, MI 48075  
(810) 343-0190

By: *Carol F. Sweet*  
Carol F. Sweet (P35963)  
Asst. Attorney General  
Natural Resources Division  
P.O. Box 900058  
Lansing, MI 48209  
(517) 373-7540

60K7M

1607 E. Big Beaver Rd., Ste. 205  
Troy, MI 48063  
(810) 528-6500

By: *Karen Evangelista*  
Karen Evangelista (P36144)  
Sherata, Chinko & Kipparick, PC  
Attorney for Wayne County Treasurer  
445 S. Livernois #221  
Rochester Hills, MI 48307  
(810) 652-8200

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Post-It Fax Note	7671	Date	1/2/97	# of Pages	1
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